

ADVICE TO APPLICANT

PLEASE READ CAREFULLY. FEE WILL NOT BE RETURNED.

- I. Aliens Eligible for Cancellation of Removal: You may be eligible to have your removal canceled under section 240A(b) of the Immigration and Nationality Act (INA). To qualify for this benefit, you must establish in a hearing before an Immigration Judge that:
- A.
1. Prior to the service of the Notice to Appear, you have maintained continuous physical presence in the United States for 10 years or more, and you have been a person of good moral character as defined in section 101(f) of the INA during such period;
 2. You have not been convicted of an offense covered under sections 212(a)(2), 237(a)(2), or 237(a)(3) of the INA; and
 3. Your removal would result in exceptional and extremely unusual hardship to your United States citizen or lawful permanent resident spouse, parent, or child, and you are deserving of a favorable exercise of discretion on your application.

OR

- B.
1. You have been battered or subjected to extreme cruelty in the United States by your United States citizen or lawful permanent resident spouse or parent, or you are the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or lawful permanent resident parent;
 2. Prior to the service of the Notice to Appear, you have maintained continuous physical presence in the United States for 3 years or more and you have been a person of good moral character as defined in section 101(f) of the INA during such period;
 3. You are not inadmissible under sections 212(a)(2) or 212(a)(3) of the INA, you are not deportable under section 237(a)(1)(G) or sections 237(a)(2)-(4) of the INA, and you have not been convicted of an aggravated felony as defined under the INA;
 4.
 - a. Your removal would result in extreme hardship to you or your child who is the child of a United States citizen or lawful permanent resident; or
 - b. You are a child whose removal would result in extreme hardship to you or your parent; and
 5. You are deserving of a favorable exercise of discretion on your application.

NOTE: If you have served on active duty in the Armed Forces of the United States for at least 24 months, you do not have to meet the requirements of continuous physical presence in the United States. You must, however, have been in the United States when you entered the Armed Forces. If you are no longer in the Armed Forces, you must have been separated under honorable conditions.

- II. Aliens NOT Eligible for Cancellation of Removal: You are not eligible for cancellation of removal under section 240A(b)(1) of the INA if you:
- A. Entered the United States as a crewman after June 30, 1964;

- B. Were admitted to the United States as, or later became, a nonimmigrant exchange alien as defined in section 101(a)(15)(J) of the INA in order to receive graduate medical education or training, regardless of whether you are subject to or have fulfilled the 2 year foreign residence requirement of section 212(e) of the INA;
- C. Were admitted to the United States as, or later became, a nonimmigrant exchange alien as defined in section 101(a)(15)(J) of the INA, other than to receive graduate medical education or training, and are subject to the 2 year foreign residence requirement of section 212(e) of the INA, but have neither fulfilled nor obtained a waiver of that requirement;
- D. Are an alien who is either inadmissible under section 212(a)(3) of the INA or deportable under section 237(a)(4) of the INA;
- E. Are an alien who ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion; or
- F. Are an alien who was previously granted relief under section 212(c) of the INA, or section 244(a) of the INA as such sections were in effect prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, or whose removal has previously been canceled under section 240A of the INA.

III. How to Apply for Cancellation of Removal

In order to apply for cancellation of removal, you must answer all the questions on the attached Form EOIR-42B fully and accurately. You must pay the filing fee, serve a copy of your application on the Immigration and Naturalization Service, and file your application with the appropriate Immigration Court. Please read the instruction sheet carefully before completing your application.

INSTRUCTIONS

1. PREPARATION OF APPLICATION.

To apply for cancellation of removal under section 240A(b) of the Immigration and Nationality Act (INA), you must fully and accurately answer all questions on the attached Form EOIR-42B. A separate application must be prepared and executed for each person applying for cancellation of removal. An application on behalf of an alien who is mentally incompetent or is a child under 14 years of age shall be executed by a parent or guardian.

Your responses must be typed or printed legibly in ink. Do not leave any questions unanswered or blank. If any questions do not apply to you, write "none" or "not applicable" in the appropriate space.

To the extent possible, answer all questions directly on the form. If there is insufficient room to fully respond to a question, please continue your response on an additional sheet of paper. Please indicate the number of the question being answered next to your response on the additional sheet and sign, date, and securely attach the additional sheet to the Form EOIR-42B.

2. BURDEN OF PROOF.

The burden of proof is on you to prove that you meet all of the statutory requirements for cancellation of removal for certain nonpermanent resident aliens under section 240A(b) of the INA and that you are entitled to such relief as a matter of discretion. To meet this burden, your responses to the questions on the application should be as detailed and complete as possible. You should also attach to your application any documents that demonstrate your eligibility for cancellation of removal (see "SUPPORTING DOCUMENTS" below).

3. SUPPORTING DOCUMENTS.

You should submit documentary evidence to show that you have maintained continuous physical presence in the United States for the required period. Documents which may evidence your physical presence in the United States include, but are not limited to, bankbooks, leases, deeds, licenses, receipts, letters, birth records, church records, school records, employment records, and evidence of tax payments.

You should submit documents which help to show that you are, and have been, a person of good moral character during the entire period of continuous physical presence in the United States required for eligibility for cancellation of removal. You should submit police records from each jurisdiction in which you resided during such period. To show good moral character, it is recommended that you submit the affidavits of witnesses attesting to your good moral character, preferably citizens of the United States, and if you are employed, your employer. The affidavit from your employer should include information regarding the nature and duration of your employment and your earnings.

You should submit official certification to establish your relationship to those you claim would suffer hardship by your removal, and if such persons are citizens of the United States or lawful permanent residents, evidence of their citizenship or lawful permanent resident status. Documentary evidence of such relationships may include, but are not limited to, birth records, marriage certificates, proof of divorce or termination of marriage, and death certificates.

You should also submit with your application copies of any documents which you were issued by the Immigration and Naturalization Service. The Immigration Judge may require you to submit additional records relating to your request for cancellation of removal. These documents may include, but are not limited to, documents which reflect payment of taxes, court convictions, and payment of child support during your physical presence in the United States.

The original of all supporting documents must be available for inspection at the hearing. If you wish to have the original documents returned to you, you should also present reproductions.

4. REQUIRED DOCUMENTS.

Each applicant 14 years of age or older must also complete a Biographic Information Form G-325A and a Fingerprint Card, FD-258. You will be given instructions on how to complete this requirement. You will be notified in writing of the time and locations of the Application Support Center or the designated Law Enforcement Agency where you must go to be fingerprinted. It is important to furnish all the information on the fingerprint card.

5. TRANSLATIONS.

Any document in a foreign language must be accompanied by an English language translation and a certificate signed by the translator stating that he/she is competent to translate the document and that the translation is true and accurate to the best of the translator's abilities. Such certification must be printed legibly or typed.

6. PHOTOGRAPHS.

Unless you are incarcerated or detained in a facility which prevents your compliance with this instruction you must submit two glossy, unretouched, color photographs of yourself taken within 30 days of the date of this application. These photos must have a white background and must not be mounted. The dimension of your facial image in the photograph should be about 1 inch from the chin to the top of hair and you should be shown in 3/4 frontal view showing the right side of your face with your right ear visible. Using a pencil or felt pen, you should lightly print your name and alien registration number on the back of each photograph.

7. FEES.

Before you file your Form EOIR-42B with the Immigration Court, you must pay the required \$100 fee to the Immigration and Naturalization Service. Evidence of payment of this fee in the form of a fee stamp or a receipt must accompany your Form EOIR-42B. This fee will not be refunded, regardless of the action taken on your application. Therefore, it is important that you read the advice, instructions, and application carefully before responding. **If you are unable to pay the fee, you may ask the Immigration Judge to permit you to file your Form EOIR-42B without fee (fee waiver).**

DO NOT SEND CASH. All fees must be submitted in the exact amount. Remittance may be made by personal check, cashier's check, certified bank check, bank international money order, or foreign draft drawn on a financial institution in the United States and payable to the "Immigration and Naturalization Service" in United States currency. If the applicant resides in the Virgin Islands, the check or money order must be payable to the "Commissioner of Finance of the Virgin Islands." If the applicant resides in Guam, the check or money order must be made payable to the "Treasurer, Guam." Personal checks are accepted subject to collectibility. An uncollectible check will render the application and any documents issued pursuant thereto invalid. A charge of \$30.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. When the check is drawn on an account of a person other than the applicant, the name and alien registration number of the applicant must be entered on the face of the check. All checks must be drawn on a bank located in the United States.

8. SERVING & FILING YOUR APPLICATION.

You must serve the following documents on the INS District Counsel:

- a copy of your Form EOIR-42B, Application for Cancellation of Removal, with all supporting documents and additional sheets;
- evidence of payment of the filing fee or a request for a waiver of the fee by an Immigration Judge;
- the original Biographical Information Form G-325A;
- the original Fingerprint Card, FD-258; and
- a photograph of you which meets the requirements of instruction #6 above.

You must file the following documents with the appropriate Immigration Court:

- the original Form EOIR-42B with all supporting documents and additional sheets;
- evidence of payment of the filing fee or a request for a waiver of the fee by an Immigration Judge;
- a copy of Biographical Information Form G-325A;
- a copy of Fingerprint Card, FD-258;
- a photograph of you which meets the requirements of instruction #6 above; and
- a certificate showing service of these documents on the INS District Counsel, unless service is made on the record at the hearing.

9. PENALTIES.

You must answer all questions on Form EOIR-42B truthfully and submit only genuine documents in support of your application. **You will be required to swear or affirm that the contents of your application and the supporting documents are true to the best of your knowledge.** Your answer to the questions on this form and the supporting documents you present will be used to determine whether your removal should be canceled and whether you should be permitted to adjust your status. Any answer you give and any supporting document you present may also be used as evidence in any proceeding to determine your right to be admitted or readmitted, re-enter, pass through, or reside in the United States. Your application may be denied if any of your answers or supporting documents are found to be false.

Presenting false answers or false documents may also subject you to criminal prosecution under 18 U.S.C. section 1546 and/or subject you to civil penalties under 8 U.S.C. section 1324c if you submit your application knowing that the application, or any supporting document, contains any false statement with respect to a material fact, or if you swear or affirm that the contents of your application and the supporting documents are true, knowing that the application or any supporting documents contain any false statement with respect to a material fact. If convicted, you could be fined up to \$250,000, imprisoned for up to five (5) years, or both. 18 U.S.C. sections 1546(a), 3559(a)(4), 357(b)(3). If it is determined you have violated the prohibition against document fraud and a final order is entered against you, you could be subject to a civil penalty up to \$2,000 for each document used or created for the first offense, and up to \$5,000 for any second, or subsequent offense. In addition, if you are the subject of a final order for violating 8 U.S.C. section 1324c, relating to civil penalties for document fraud, you will be removable from the United States.

10. PAPERWORK REDUCTION ACT.

We try to create forms and instructions that are accurate, can easily be understood, and which impose the least possible burden on you to provide us with information. Often, this process is difficult because some immigration laws are very complex. The reporting burden for this collection of information is computed as follows: (1) learning about the form, 45 minutes, (2) completing the form, 2 hours, and (3) assembling and filing the form, 3 hours, for an average of 5 hours, 45 minutes per application. If you have comments regarding the accuracy of this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, you may write to the U.S. Department of Justice, Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

11. REPORTING BURDEN.

A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.